

GIBSON, DUNN & CRUTCHER LLP
JEFFREY T. THOMAS, SBN 106409
JTthomas@gibsondunn.com
4 Park Plaza, Suite 1400
Irvine, California 92614-8557
Telephone: (949) 451-3800
Facsimile: (949) 451-4220

ANGELIQUE KAOUNIS, SBN 209833
AKaounis@gibsondunn.com
333 South Grand Ave.
Los Angeles, California 90071-3197
Telephone: (213) 229-7000
Facsimile: (213) 229-7520

Attorneys for Nonparty
HEWLETT-PACKARD COMPANY

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re IBM Subpoena in the matter of:

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Plaintiff and Counterclaim
Defendant,

v.

PLATFORM SOLUTIONS, INC.,

Defendant and Counterclaimant.

CASE NO. 5:07-mc-80174-JW PVT

Underlying action pending in the United States
District Court for the Southern District of New
York, CASE NO. CV 06-13565 SCR

**NONPARTY HEWLETT-PACKARD
COMPANY'S AMENDED NOTICE OF
MOTION TO MODIFY SUBPOENA AND
FOR A PROTECTIVE ORDER;**

Date: September 11, 2007

Time: 10:00 a.m.

Place: Courtroom 5

Before: The Honorable Patricia V.
Trumbull

1 NOTICE IS HEREBY GIVEN that on September 11, 2007, at 10:00 a.m., or as soon
 2 thereafter as counsel may be heard by the above-titled Court, located at 280 South 1st Street, San
 3 Jose, CA 95113, Nonparty Hewlett-Packard Company ("HP") will, and hereby does move the Court
 4 to modify the scope of the Subpoena served by IBM on HP in the underlying action (the
 5 "Subpoena").

6 HP hereby moves this Court, pursuant to Federal Rule of Civil Procedure 45, for an order
 7 limiting the scope of the Subpoena served by IBM on HP in this action, on the grounds that the
 8 Subpoena: (1) is overly broad on its face, and therefore fails to allow reasonable time for compliance;
 9 (2) seeks disclosure of privileged or other protected matter; (3) subjects HP to undue burden; and (4)
 10 requires disclosure of a trade secret or other confidential research, development, or commercial
 11 information. For these reasons, and because HP's counsel had acted in good faith, HP further moves
 12 this Court pursuant to Federal Rule of Civil Procedure 26(c) subdivisions (2), (3), (4) & (7), for an
 13 order that that the discovery be had only on the specified terms and conditions of, by the method set
 14 forth, and subject to the objections in *HP's Objections and Responses to the May 31, 2007 Subpoena*
 15 (filed concurrently herewith as Exhibit G to the Declaration of Angelique Kaounis).

16 The Motion referenced herein is based on this Notice of Motion, and HP's Motion and
 17 accompanying Memorandum of Points and Authorities, the Declaration of Angelique Kaounis and
 18 Request for Judicial Notice (all previously filed on July 2, 2007), and on all pleadings and papers on
 19 file in this action, and upon such other evidence and arguments as may be presented to the Court at
 20 the time of the hearing.

21
 22 DATED: July 5, 2007

JEFFREY T. THOMAS
 ANGELIQUE KAOUNIS
 GIBSON, DUNN & CRUTCHER LLP

23
 24 By: /s/ Angelique Kaounis

25 Angelique Kaounis

26 Attorneys for Nonparty
 27 HEWLETT-PACKARD COMPANY
 28

CERTIFICATE OF SERVICE

MAIL, COMMERCIAL OVERNIGHT MESSENGER, FAX, HAND DELIVERY

I, Claudette M. Blaylock, hereby certify as follows:

I am employed in the County of Los Angeles, State of California; I am over the age of eighteen years and am not a party to this action; my business address is 333 South Grand Avenue, Los Angeles, California 90071, in said County and State; I am employed in the office of Angelique Kaounis, a member of the bar of this Court, and at her direction, on July 5, 2007, I served the following:

**NONPARTY HEWLETT-PACKARD COMPANY'S AMENDED NOTICE OF
MOTION TO MODIFY SUBPOENA AND FOR PROTECTIVE ORDER**

ECF REGISTRATION INFORMATION HANDOUT

on the interested parties in this action, by:

☐ **Service by Mail:** placing true and correct copy(ies) thereof in an envelope addressed to the attorney(s) of record, addressed as follows:

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business.

☒ **Service by Commercial Overnight Messenger:** placing true and correct copy(ies) thereof in an envelope addressed to the attorney(s) of record, addressed as follows:

Richard W. Erwine, Esq.
Katherine Weall, Esq.
Quinn Emanuel Urquhart
Oliver & Hedges, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010
(212) 849-7000 (tel.)
(212) 849-7100 (fax)
[Courtesy copy by email/PDF]
richarderwine@quinnemanuel.com
KatherineWeall@QuinnEmanuel.com

Ryan C. Kirkpatrick
Susman Godfrey LLP
1901 Ave. of the Stars, Suite 950
Los Angeles, CA 90067
(P) 310-789-3107
(F) 310-789-3016
[Courtesy copy by email/PDF]
rkirkpatrick@susmangodfrey.com
[Counsel for PSI]

[Counsel for IBM]

and after sealing said envelope I caused same to be delivered to the aforementioned attorney(s) by qualified commercial overnight messenger.

☐ **Service by Fax:** causing a true copy thereof to be sent via facsimile to the attorney(s) of record at the telecopier number(s) so indicated, addressed as follows:

Attorney Name & Address

Fax and Callback Number

and that the transmission was reported as completed and without error. A true and correct copy of said transmission report is attached hereto.

☐ **Service by Hand Delivery:** delivering true and correct copy(ies) thereof and sufficient envelope(s) addressed to the attorney(s) of record, addressed as follows:

to a messenger or messengers for personal delivery.

I certify under penalty of perjury that the foregoing is true and correct, that the foregoing document(s), and all copies made from same, were printed on recycled paper, and that this Certificate of Service was executed by me on July 5, 2007 at Los Angeles, California.



Claudette M. Blaylock

100257268_1.DOC